

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GABRIEL MIDALGO,

Plaintiff,

-v.-

9:06-CV-0330
(DNH)(RFT)

MCLAUGHLIN; COMMISSIONER GOORD;
SGT. OLSEN; C.O. CARTER; C.O. MILLER;
C.O. REED; DRUKIN,

Defendants.

APPEARANCES:

OF COUNSEL:

GABRIEL MIDALGO

Plaintiff, *Pro Se*

97-A-7235

Southport Correctional Facility

P.O. Box 2000

Pine City, NY 14871

OFFICE OF THE ATTORNEY GENERAL

State of New York

The Capitol

Albany, NY 12224

Counsel for Defendants

ROGER W. KINSEY, ESQ.

Assistant Attorney General

RANDOLPH F. TREECE, U.S. MAGISTRATE JUDGE

DECISION AND ORDER

Presently before the Court is a motion to compel discovery filed by *pro se* plaintiff Gabriel Midalgo. Dkt. No. 32.¹ Defendants oppose the motion. Dkt. No. 34.

Plaintiff's motion to compel relates to plaintiff's request for production of documents ("RFP") dated July 23, 2007. Dkt. No. 32. Plaintiff states that, as of the date of his motion, no response had been provided to his RFP. *Id.* at 1. Defendants oppose plaintiff's motion. Dkt. No.

¹ We note that Plaintiff has filed another Motion to Compel. Dkt. No. 43. This Order does not concern that second Motion, which will be considered in due course.


34. Defendants state that on October 11, 2007, they sent Plaintiff a response to the RFP. *Id.*, Attached Declaration of Service. Defendants indicate that the response included 86 pages, and that Plaintiff “was advised that additional pages will be produced upon plaintiff’s return of a medical release[.]” *Id.* at 1. Plaintiff did not object to the response after he received it, and has not indicated that he believes the response to be incomplete, or that any objections made therein are not legally sufficient. Although defendants have failed to provide the Court with copies of the documents produced, Plaintiff has not taken exception to Defendants’ assertion that they have responded in full to Plaintiff’s RFP. Accordingly, Plaintiff’s first motion to compel (Dkt. No. 16) is **denied as moot**. See, e.g., *Hamilton v. Poole*, No. 95-CV-239H, 1997 WL 626406, at *6 (W.D.N.Y. Sep. 22, 1997) (denying motion to compel filed by plaintiff where defendants responded to discovery after motion was filed).

WHEREFORE, it is hereby

ORDERED, that Plaintiff’s Motion to Compel (Dkt. No. 32) is **denied** as moot, and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on the parties in accordance with the Local Rules.

Date: March 7, 2008
Albany, N.Y.



RANDOLPH F. TREECE
United States Magistrate Judge